

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

X

WEINSTEIN, J.

POLLAK, M.J.

THE CITY OF NEW YORK, RUDOLPH W. GIULIANI,
Mayor of the City of New York, PETER F. VALLONE,
Speaker of the New York City Council, and THE NEW
YORK CITY HEALTH AND HOSPITALS
CORPORATION,

COMPLAINT

Plaintiffs,

CV 00 36 41
JURY TRIAL DEMANDED

-against-

ARMS TECHNOLOGY, INC., B.L. JENNINGS, INC.,
BERETTA U.S.A. CORP., BROWNING ARMS CO.,
BRYCO ARMS, INC., CARL WALTHER GmbH,
COLT'S MFG. CO., INC., FMJ (a/k/a "FULL METAL
JACKET"), FORJAS TAURUS, S.A., GLOCK INC.,
GLOCK GmbH, H & R 1871 INC., HI-POINT
FIREARMS, INTERNATIONAL ARMAMENT
CORPORATION d/b/a INTERARMS INDUSTRIES,
INC., KEL-TEC CNC INDUSTRIES, INC., NAVEGAR
INC. d/b/a INTRATEC USA, INC., O.F. MOSSBERG
AND SONS, INC., PHOENIX ARMS, PIETRO
BERETTA Sp. A, RAVEN ARMS, INC., ROSSI S.A.,
SIGARMS, INC., SMITH AND WESSON CORP.,
STURM, RUGER AND CO., INC., SUNDANCE
INDUSTRIES, INC., TAURUS INTERNATIONAL MFG,
INC., AMERICAN SHOOTING SPORTS COUNCIL,
INC., NATIONAL SHOOTING SPORTS
FOUNDATION, INC., SPORTING ARMS AND
AMMUNITION MANUFACTURERS INSTITUTE, INC.,
JOHN DOE MANUFACTURERS (1-100), JOHN DOE
DEALERS (1-100), JOHN DOE DISTRIBUTORS (1-
100),

Defendants.

X

U.S. DISTRICT COURT
E.D.N.Y.
BROOKLYN OFFICE

JUN 20 12 21 PM '00

FILED

Plaintiffs, the City of New York , Rudolph W. Giuliani, Peter F. Vallone and the New York City Health and Hospitals Corporation (referred to collectively herein as the "City"), for their complaint against the defendants, allege as follows:

Preliminary Statement

1. This is a civil action seeking compensatory damages and injunctive relief against the defendant manufacturers, distributors, and sellers of handguns and other firearms who knowingly, and deliberately, and for their own financial benefit, manufacture, market and distribute guns in a manner that foreseeably injures the City and its residents.

2. Defendants' practices ensure that substantial numbers of their firearms will ultimately be sold in an illegitimate secondary market to criminals, youths or irresponsible people, who could not legally qualify to purchase guns. Defendants could dramatically reduce the flow of handguns and firearms to the illegitimate market should they choose to do so. Instead, they facilitate, supply and exploit this secondary market as a steady and lucrative source of profit.

3. To escape responsibility for the proliferation of illegal firearms, defendant manufacturers have erected a wall of deniability between themselves and their distributors and dealers. Manufacturers scrupulously avoid monitoring the downstream path of their products and are careful not to provide training or guidance to their distributors or dealers. Thus they can disingenuously deny knowledge as to the identity of the end-users of their firearms.

4. They cannot, however, deny knowledge about the actual end use of their product. The United States Bureau of Alcohol, Tobacco and Firearms ("ATF") notifies a manufacturer every time one of its guns is recovered in connection with a crime. Information about the distributor and dealer who handled the crime gun is also readily available.

5. Dealers and distributors too, have negligently and intentionally acted to create and maintain the illegal secondary market. Many make sales without filling out required federal paperwork or conducting background checks on purchasers. Others conveniently look the other way while sales are made to straw purchasers or under circumstances where they know or should know the gun will thereafter be diverted into the illegal market.

6. From the perspective of all defendants, this modus operandi has been a resounding financial success. From the perspective of the City and its citizens, it has been nothing short of disastrous. Hundreds of lives are lost each year to illegal gun use, and millions of dollars are spent to control gun related crime and treat its victims.

7. Compounding defendants' liability, gun manufacturers, for many years have failed or refused to design "safer" guns. Among feasible design alternatives, gun manufacturers could "personalize" guns so that only authorized persons could fire them. Moreover, defendants have used the fear generated by gun crime to sell even more guns to frightened citizens for "self-protection." Defendants' ads exploit such fears and mislead consumers into believing that a firearm will increase safety when in fact there is an enhanced probability that a household with a firearm will experience a homicide.

Jurisdiction and Venue

8. The amount in controversy in this action exceeds \$75,000.00, exclusive of interest and costs, and the action is between citizens of different States and/or citizens of foreign States.

9. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1332.

10. Venue is proper pursuant to 28 U.S.C. § 1391(a) in that a substantial part of the events or omissions giving rise to this claim occurred in this district.

The Parties

11. Plaintiff The City of New York ("the City") was and is a municipal corporation existing by and under the laws of the State of New York.
12. Plaintiff Rudolph W. Giuliani is the Mayor of the City of New York.
13. Plaintiff Peter F. Vallone is the Speaker of the New York City Council.
14. Plaintiff The New York City Health and Hospitals Corporation ("HHC") was and is a New York public benefit corporation created pursuant to New York Unconsolidated Laws §§ 7381 et seq. to provide hospital services, including outpatient services, to the population of New York City.
15. Defendant Arms, Technology Inc. is a gun manufacturer and a Utah corporation whose principal place of business is in Utah.
16. Defendant B.L. Jennings, Inc. is a gun manufacturer and distributor and a Nevada corporation whose principal place of business is 715 East Amour Road, N. Kansas City, MO 64116.
17. Defendant Beretta U.S.A. Corp. is a gun manufacturer and a Maryland corporation whose principal place of business is 17601 Beretta Drive, Accokeek, MD 20607.
18. Defendant Browning Arms Co. is a gun manufacturer and a Utah corporation whose principal place of business is One Browning Place, Morgan, UT 84050.
19. Defendant Bryco Arms Inc. is a gun manufacturer and a Nevada corporation whose principal place of business is c/o Jennings Firearms, Inc., 17692 Cowan, Irvine, CA 92714.
20. Defendant Carl Walther GmbH is a gun manufacturer and a German corporation whose principal place of business is in Germany.

21. Defendant Colt's Mfg. Co. Inc. is a gun manufacturer and a Delaware corporation whose principal place of business is P.O. Box 1868, Hartford, CT 06144-1868.
22. Upon information and belief, defendant FMJ (a/k/a "Full Metal Jacket") is a gun manufacturer and a Tennessee corporation whose principal place of business is in Tennessee.
23. Defendant Forjas Taurus, S.A. is a gun manufacturer and a Brazil corporation whose principal place of business is Avenida Do Forte 511, Porto Alegre, RS Brazil 91360
24. Defendant Glock, Inc. is a gun manufacturer and a Georgia corporation whose principal place of business is 6000 Highlands Parkway, Smyrna, GA 30082.
25. Defendant Glock GmbH is a gun manufacturer and an Austrian corporation whose principal place of business is c/o Post Office Box 50, A-2232 Deutsch Wagram, Austria.
26. Defendant H & R 1871 Inc. is a gun manufacturer and a Massachusetts corporation whose principal place of business is 60 Industrial Rowe, Gardner, MA 01440.
27. Defendant Hi-Point Firearms is a gun manufacturer and an Ohio corporation whose principal place of business is 5990 Philadelphia Drive, Dayton, OH 45415.
28. Defendant International Armament Corp. d/b/a Interarms Industries, Inc. is a gun manufacturer and a Delaware corporation whose principal place of business is 10 Prince Street, Alexandria, VA 22314.
29. Defendant Kel-Tec CNC Industries, Inc. is a gun manufacturer and a Florida corporation whose principal place of business is in Florida.
30. Defendant Navegar Inc. d/b/a Intratec USA, Inc. is a gun manufacturer and a Florida corporation whose principal place of business is 12405 S.W. 130th Street, Miami, FL 33186.

31. Defendant O. F. Mossberg and Sons, Inc., is a gun manufacturer and a Connecticut corporation whose principal place of business is in Connecticut.

32. Defendant Phoenix Arms is a gun manufacturer and a California corporation whose principal place of business is 1420 S. Archibald Avenue, Ontario, CA 91761.

33. Defendant Pietro Beretta Sp. A. is a gun manufacturer and an Italian corporation whose principal place of business is 18-25063 Gardeon Val Trompia, Brescia, Italy.

34. Defendant Raven Arms, Inc. is a gun manufacturer and a California corporation whose principal place of business is in California.

35. Defendant Rossi S.A. is a gun manufacturer and a Brazilian corporation whose principal place of business is Amadeo, Rua, Amadeo Rossi, 143, Sao Leopoldo, RS. Brazil 93030-220.

36. Defendant Sigarms, Inc. is a gun manufacturer and a New Hampshire corporation whose principal place of business is Industrial Drive, Exeter, New Hampshire 03833.

37. Defendant Smith & Wesson Corp. is a gun manufacturer and a Massachusetts corporation whose principal place of business is 2100 Roosevelt Avenue, Springfield, MA

38. Defendant Sturm, Ruger & Co., Inc. is a gun manufacturer and a Delaware corporation whose principal place of business is Lacey Place, Southport, CT 06490.

39. Defendant Sundance Industries, Inc. is a gun manufacturer and a California corporation whose principal place of business is 25163 W. Avenue Stanford, Valencia, CA.

40. Defendants Taurus International Manufacturing, Inc. is a gun manufacturer and Florida corporation whose principal place of business is 16175 NW 49th Avenue, Miami, FL 33014.

41. Defendant American Shooting Sports Council, Inc. is a tax-exempt business league under section 501(c)(6) of the Internal Revenue Code and an industry trade association composed of firearms manufacturers and sellers, including some or all of the defendant manufacturers, organized and existing under the laws of the State of Georgia with its principal office in Georgia.

42. Defendant National Shooting Sports Foundation, Inc. is a tax-exempt business league under section 501(c)(6) of the Internal Revenue Code and an industry trade association composed of firearms manufacturers and sellers, including some or all of the defendant manufacturers, organized and existing under the laws of the State of Connecticut with its principal office in Connecticut.

43. Defendant Sporting Arms and Ammunition Manufacturers' Institute, Inc. is a tax-exempt business league under section 501(c)(6) of the Internal Revenue Code and an industry trade association composed of firearms manufacturers and sellers, including some or all of the defendant manufacturers, organized and existing under the laws of the State of Connecticut with its principal office in Connecticut.

44. Defendants John Doe manufacturers (1-100) inclusive, are business entities or individuals, whose identities are not currently known, which manufacture or cause to be manufactured and distributed or cause to be distributed in the City, either directly or indirectly, firearms which are either defective or illegal or which are used for improper purposes.

45. Defendants John Doe distributors (1-100) inclusive, are business entities or individuals, whose identities are not currently known, which distribute or cause to be distributed in the City firearms which are either defective or illegal or which are used for improper purposes.

46. Defendants John Doe dealers (1-100) inclusive, are business entities or individuals, whose identities are not currently known, which sell firearms which are either defective or illegal or which are used for improper purposes in the City.

47. All references made herein to "defendants" shall include each and every defendant so named, unless specifically stated otherwise.

Facts

A. The Toll of Illegal and Unsafe Gun Use

48. Crime committed with firearms has taken an enormous toll in New York City. Firearms are used in approximately 66% of the murders committed here each year. In 1996, 652 people were murdered with a firearm in New York City; 465 in 1997, 375 in 1998, and 391 in 1999. More than double the number of people murdered with firearms suffered serious firearm injuries, but did not die. Firearms were also used in connection with other crimes. In 1998, for example, of the 39,358 reported robberies in the City, 7,640 or approximately 20% involved the use of a firearm. Of the 2,181 reported felony reckless endangerment cases, 23% involved the use of a firearm. Twenty per cent of menacing cases also involved the use of a firearm. These figures are typical of recent years.

49. This is the City's share of a staggering national toll: the United States leads the world in the number of people and in the number of children who die and are injured each year by guns. The yearly toll of over 30,000 dead compares to no more than a few hundred in every other industrialized country. On average 12 American children and teenagers die every day from firearm injuries. Homicides, mostly committed with handguns, are the second leading cause of death for American youths aged 15-19.

50. The unsafe design of defendants' guns results in over 1,000 unintentional shooting deaths and over ten times as many non-fatal injuries from unintentional shootings every year. The U.S. General Accounting Office ("GAO") has estimated that 23% of unintentional shooting deaths occur because the user of the gun was not aware that a round of ammunition had been loaded into the gun's firing chamber, resulting in as many as 320 to 345 deaths nationwide

each year. For each of these deaths, there are countless other unintentional shooting injuries that are not fatal.

51. Unintentional shootings with defendants' unsafe firearms often involve adolescents. Adolescents are foreseeably attracted to guns and typically do not understand the risks associated with handling a firearm. According to the GAO, approximately 35% of all unintentional shooting deaths involve users of guns who were between the ages of 13 and 16. On information and belief, many such shootings have occurred in the City.

52. Adolescent homicides and suicides are usually committed with firearms that the adolescent has taken from his or her home. In the United States, the rate at which youths aged 10-19 have committed suicide with a firearm has long averaged about once every six hours. On information and belief, in the City, thousands of minors live in homes where firearms are present. Studies have indicated that the odds that potentially suicidal minors will kill themselves double when a gun is kept in the home. Firearms are used in 65% of male teen suicides and 47% of female teen suicides. Among 15-19 year-olds, firearm related suicides have been estimated to account for 81% of the increase in the overall rate of suicide from 1980-1992. On information and belief, large numbers of such firearm-related teen suicides occur each year in the City.

53. In 1997, there were 67 suicides reported among young people in the City aged 15 to 24; 20 of them, or nearly 30%, accomplished with a firearm. In 1998, there were 60 suicides among the same age group, more than 28% of them committed with a firearm.

54. There are also many accidents involving children and firearms in the City. For example,

- (a) On November 1, 1998, a 2-year-old Bronx boy shot himself in the arm with his father's sawed-off shotgun.

- (b) On December 6, 1997, Christopher Murphy, an 11-year-old Staten Island boy, was killed by a playmate who found a loaded semi-automatic pistol left by the boy's parents in easy reach of the youngsters.
- (c) On September 26, 1995, Jose Pena, Jr., a 3-year-old Bronx boy, found his father's 22-caliber revolver and shot and killed himself.
- (d) On July 3, 1994, 4-year-old Eddie Watkins, Jr. shot and killed himself when he found his mother's .38 caliber revolver.
- (e) On August 13, 1990, a father accidentally shot his 3-week old son, when the gun he was cleaning discharged.

55. Every year HHC treats hundreds of victims of guns at a gross cost of approximately \$17 million per year. The City also pays a portion of the Medicaid cost of the firearm-related injuries of those treated at private hospitals.

B. The Gun Market

56. Defendant manufacturers sell their handguns to distributors which distribute them through dealers. The distributors and dealers are licensed by the federal government, but the licensing scheme, adopted several decades ago with the support and guidance of the firearms industry, falls far short of being a functional regulatory scheme. Almost anyone 21 years old who does not have a criminal felony record can be a federally licensed firearms dealer (usually called "FFL" for federal firearms licensee). See 18 U.S.C. § 982; 27 C.F.R. § 178.47.

57. In the 1980's, there were more FFL's in the United States than gas stations, and only a small percentage of them actually operated gun stores. In recent years the number has declined, but there are still about 80,000, many of whom do not have a store, including a large number of "kitchen table" and "car trunk" dealers. Arguably, it is far easier to get a license to sell guns than to be an importer, manufacturer or distributor of alcoholic beverages or tobacco.

58. Defendants know that this licensing scheme and the structure, policies and practices of the distribution system they established and maintain do not significantly limit criminal and underage access to their product. They are also aware of reasonable measures that would limit this access.

59. Defendants knowingly supply distributors and dealers without prohibiting them from engaging in sales and business practices that facilitate and supply the criminal market in guns. For example, defendants know that guns sold in "multiple sales" - - one person buying two or more handguns at the same time or over a limited time period - - are likely to end up in the criminal market. Yet they permit these sales. In a recent study in Philadelphia, about half of the handguns purchased were sold to buyers who bought at least one additional handgun in the same 15-month period; 30% were bought by buyers who purchased three or more; and 17% were bought by a small number of purchasers (3% of the purchasers) who bought five or more. Some purchasers bought over 25 handguns - one bought over 100 - most or all of which were cheap, small and semi-automatic.

60. Defendants and their representatives tend to refer to these multiple purchasers as "collectors," claiming that they buy such large quantities of cheap, crime-friendly guns for display, investment or historical reasons. According to researchers in the field and law enforcement officials this claim is patently false.

61. Another common gun market phenomenon is "straw" purchases, in which someone purchases firearms for someone else who may be prohibited from purchasing by state or federal law. According to a recent study, more than one-half of the firearms subject to firearm trafficking investigations were initially acquired as part of a straw purchase.

62. The U.S. Bureau of Alcohol, Tobacco, and Firearms provides a great deal of reliable information about the gun market. The ATF, which traces guns used in state, local and federal crimes reports that a large proportion of handguns used in crime were sold recently, within three years of the crime.

63. In the period from August 1, 1997 through July 31, 1998, the ATF traced 8,437 guns used in crimes in New York City. Of those guns, 618 were used in crime committed by juveniles age 17 and under. More than half of the crime guns, or 4,740, were semiautomatic pistols. Revolvers, rifles, shotguns, and derringers were the next most popular crime guns. The guns used in the top 25% of crimes were the Smith & Wesson .38 caliber revolver (406 traced), the Lorcin .38 caliber, Raven .25 caliber, Davis .38 caliber, and Bryco .38 caliber semiautomatic pistols (312, 308, 203, and 185 traced, respectively), the Smith & Wesson .357 revolver (166 traced), the Mossberg 12-gauge shotgun (156 traced), and the Smith & Wesson, Glock, and Ruger nine millimeter semiautomatic pistols (152, 149, and 143 traced, respectively). These guns were used in the commission of 433 robberies, 309 assaults/threats, 278 homicides, 143 narcotics crimes, 101 burglaries/thefts/frauds, and many other types of crimes.

64. The ATF analyzed the time-to-crime rate for these guns, which indicates the period of time between the first retail sale of a firearm by an FFL and the time the firearm is recovered by enforcement officials. Available data show that the Lorcin .38 caliber semiautomatic pistol was most often used in a crime fewer than 3 years after purchase (73 traced), followed by the Davis .38 caliber semiautomatic pistol (36 traced), the Ruger nine millimeter semiautomatic pistol (31 traced), the Glock nine millimeter semiautomatic pistol (28 traced), and the Smith & Wesson nine millimeter semiautomatic pistol (24 traced). This is strongly indicative of illegal trafficking

65. The ATF also traced the source states for crime guns that they were able to trace to an FFL. The top ten source states for crime guns used in the City were New York (501), Virginia (414), Florida (329), Georgia (282), North Carolina (268), South Carolina (224), Pennsylvania (159), Ohio (136), Alabama (106), and Texas (99). More than a thousand guns were unable to be traced as their serial numbers had been obliterated.

66. In a new study released by ATF in early February 2000, ATF reported that a relatively small number of dealers account for most of the traced guns used in crimes nationally. In the study ATF found that 1.2% of the dealers account for 57% of firearms that are traced; 0.2% (one-fifth of one percent) of the dealers account for 27% of firearms that are traced.

67. A congressional study of ATF data released in December 1999 found that an extraordinary proportion of crime guns bought from "high crime" gun dealers were probably bought with the intention of selling or otherwise transferring them to the criminal market. Of 35,000 crime guns traced to 140 "high crime" gun dealers, 87% were possessed by someone other than the buyer. The study also found one-third of these crime guns were recovered in connection with a crime within just one year of its purchase, and half were traced to crimes within two years of their purchase.

68. The factors that support finding Defendants negligent include, but are not limited to the following sections of this complaint: C, D, E, F and G.

C. Defendant Manufacturers' Production of Guns

69. Defendant manufacturers are well aware that they supply the criminal or underground handgun market. They produce, market and distribute substantially more handguns than they reasonably expect to sell to law-abiding purchasers. They supply states with weak handgun controls and restrictions, such as Pennsylvania and some southern states along the I-95 corridor, with substantially more handguns than are expected to be purchased by their residents

for legitimate reasons. Defendants know that this over supply is intended to be trafficked to prohibited purchasers in states, counties and cities, like New York State and New York City, with substantial handgun controls and restrictions.

70. Handguns used in crime constitute a very substantial portion of defendants' handgun sales. Defendants have also increased the production of particular handguns that are popular for use by criminals. For example, over the past decade, during which the handgun market has been stagnant (until the Y2K and millennium scares), defendants increased their production of 9 millimeter handguns although, on information and belief, their own market research showed that the market for 9 millimeters among law-abiding purchasers was already saturated. Nine millimeter handguns are popular in the illicit drug trade and, according to most national studies, are the most frequently used in crime. A recent study in one state concluded that they are the gun of choice for criminals, accounting for almost a third of the homicides.

71. Defendants have sometimes designed and advertised particular features of their products that appeal to purchasers with criminal intent. For example, defendant Navegar's brochure for its Intratec line has stated that a trademarked coating yields "excellent resistance to finger prints."

D. Defendant Manufacturers' Failure to Monitor The Distribution of their Firearms.

72. Defendant manufacturers have been specifically informed of the end use of their products by the ATF. Each ATF crime-gun trace starts with a direct communication to the manufacturer, who is thereby informed that a particular gun it produced was used in a crime. Defendant manufacturers know – from their own records – the particular distributor through whom each gun was first distributed. They also have or can obtain the identities of the particular distributors and dealers subsequently involved in the chain of sale for each ATF-identified gun.

73. Thus, the ATF crime trace information together with other data in the possession of defendants, provides a clear picture for each defendant of the crime-producing tendencies of its distribution practices. Manufacturers also possess, have access to or can obtain the identities of other distributors and dealers that may be in the sales chain for each traced crime gun. Nevertheless, defendants do not use the data literally placed in their hands on a daily basis by the ATF to terminate, limit, supervise, monitor or otherwise discipline distributors or dealers whose sales yield inordinate numbers or percentages of crime-traced guns.

74. According to the former Senior Vice President for Marketing and Sales of Smith & Wesson, which has the highest share of the national handgun market and among the highest number of handguns used in City crime, defendants fail to use the information in their possession:

The company and the industry as a whole are fully aware of the extent of the criminal misuse of firearms. The company and the industry are also aware that the black market in firearms is not simply the result of stolen guns but is due to the seepage of guns into the illicit market from multiple thousands of unsupervised federal firearms licensees. In spite of their knowledge, however, the industry's position has consistently been to take no independent action to insure responsible distribution practices ...

I am familiar with the distribution and marketing practices of all of the principal U.S. firearms manufacturers and wholesale distributors and none of them, to my knowledge, ... investigate, screen or supervise the wholesale distributors and retail outlets that sell their products to insure that their products are distributed responsibly.

Affidavit of Robert I. Haas, February 20, 1996, on file in Hamilton v. Accu-Tek, U.S. District Court, E.D.N.Y., 95 CV 0049 (JBW).

75. Defendant manufacturers' contracts with their distributors and dealers do not provide any procedure or sanction for practices that result in the supply of guns to the illegitimate secondary market.

76. Defendants do not use available computerized inventory and sales tracking systems that are commonly and inexpensively used throughout American industry to limit and screen customers, particularly in industries that produce dangerous or harmful products.

77. Other manufacturers of dangerous or harmful products, including manufacturers of chemicals and paints, take voluntary action to avoid known detrimental consequences. In sharp contrast, defendants have completely failed and refused to adopt any such limits or to engage in even minimal monitoring or supervision of their distributors and dealers. Only after the filing and threatened filing of many lawsuits did one manufacturer, Smith & Wesson, agree to monitor distributors and dealers in any manner.

78. Defendants do not require that their dealers and retailers be trained or instructed: (a) to detect inappropriate purchasers or purchases; (b) to educate and train purchasers about the safe and proper use and storage of handguns; (c) to inquire or investigate purchasers' level of knowledge or skill or purposes for buying handguns; or (d) to train purchasers who intend to carry a concealed handgun about the appropriate circumstances in which to pull it out and fire it. Nor are they required to report their activities in this regard to the manufacturers.

79. Defendants do not prohibit high risk, suspect sales that they know or should know are likely intended for the criminal market. For example, they do not place any limit on multiple purchases and continue to sell through gun shows FFLs who do not operate an actual store, and FFLs with a history of selling a disproportionate number of crime guns.

80. Defendants' only monitoring or supervision of their distributors or dealers is aimed at maximizing profits. Some defendants have written distribution agreements that provide for the right of termination, and occasionally they have terminated or warned distributors or dealers. However, a dangerous sales practice – such as one that would make guns easily

available for potential criminal use – has not been the basis for termination and is not included in the terms of the agreements. The reasons identified for termination are: not maintaining minimum prices, advertising the price that the distributor pays to the manufacturer, or selling into the wrong market (e.g., some distributors are forbidden to sell to law enforcement, or to make foreign sales). There is no mention of termination for selling to or facilitating the crime market.

81. Defendants purposely avoid any connection to, or “vertical integration” with, the distributors and dealers that sell their products. They offer high volume monetary incentives and generally refuse to accept returns, and they contractually attempt to shift all liability and responsibility for the harm done by their products to the distributors and dealers.

82. Some of these practices and policies are not exclusive to this industry. However, defendants’ high volume sales of this product – a product which is designed to be instantaneously lethal--without the benefit of monitoring, supervision, or regard for who is purchasing, the purpose of the purchaser, or the quantities purchased, recklessly creates a serious, known risk that directly harms the City.

E. Defendants’ Deceptive Promotion of Guns

83. Defendants use the fear generated by the criminal use of their guns, to promote their products as beneficial, even necessary, for self-protection. Yet it is well established that introducing a firearm into the home is dangerous to the people who live there and to their family, friends, and associates because it is demonstrably much more likely to be used against them than against an intruder or aggressor. Such uses include intentional shootings (often of a spouse), suicides, and accidental shootings (most often involving children).

84. Statistically significant studies that control for the relevant variables have demonstrated that the homicide of a household member is almost three times more likely in

homes with guns than in homes without them. According to these studies suicide is five times more likely in homes with guns; for homes with teenagers, a suicide is ten times more likely.

85. Defendants are fully aware of these findings yet their marketing, sales materials and warnings fail to mention any of them and suggest the contrary. Defendants encourage buyers to purchase guns for use in homes with children and suggest that guns be stored unlocked and loaded. An advertisement by defendant Colt in the July 1992 southeast regional issue of Ladies Home Journal shows a woman leaning over her daughter at bedtime with the headline "Self-protection is more than your right ... it's your responsibility" and suggests that a handgun be viewed as a safety device akin to a fire extinguisher. An advertisement by defendant Beretta in the February 1994 Women and Guns says "Tip the odds in your favor" and shows a night stand on which is resting a picture of a mother and two daughters, an alarm clock and a handgun. A loose bullet is shown on the night stand next to the gun, a widely recognized unsafe practice, particularly in a household with two young children.

86. Defendant Colt followed up its Ladies Home Journal advertisement with an advertisement directed at dealers and retailers in S.H.O.T. Business, an industry publication, that reproduces the mother-daughter ad and says: "YOU MIGHT THINK THIS AD IS ABOUT HANDGUNS. IT'S REALLY ABOUT DOUBLING YOUR BUSINESS."

87. Major markets for defendants products, as explicitly identified by them or their trade associations and as evidenced in their promotions and advertisements, include (a) women, (b) youth, and (c) people who want to conceal the fact that they are carrying a firearm. This marketing strategy was developed because of stagnant or declining sales in the early 1990's in the traditional male dominated market.

88. In 1992, one of the gun industry's leading trade associations, defendant National Shooting Sports Foundation ("NSSF"), announced a "new focus on women and youngsters." NSSF started a "Youth Education Program" in a search for new customers and expansion of the gun market. The September/October 1992 issues of NSSF's magazine S.H.O.T. Business carried a column by a noted celebrity in the industry, Grits Gresham, in which he said:

There's a way to help insure that new faces and pocketbooks will continue to patronize your business: *Use the schools....* [I]t's time to make your pitch for young minds, as well as for the adult ones. Unless you and I ... imprint our positions in the minds of those future leaders, we're in trouble. (Emphasis added.)

89. By using the fear generated by the crime market and by failing to disclose known risks, defendants have misled consumers and deceptively induced them to purchase handguns, -- especially for use in homes with children -- substantially contributing to the large stock of readily accessible handguns in the City and the resulting high levels of deaths and injuries.

F. Defendants Failure to Produce a Safer Product

90. Defendants fail to take reasonable steps to minimize the known risks of possession of handguns. Defendants do not place any warnings on their products about the specific dangers and risks associated with possession of a gun in the home, carrying a concealed handgun in public places, or the risk that a user will unintentionally fire a round in the chamber thinking a gun is unloaded or the need to lock guns separate from ammunition. Although defendants are fully aware of these risks, they specifically contradict such warnings in their advertising and promotion, presenting guns as an unambiguous source of protection.

91. Defendants also manufacture, distribute and sell firearms that are defective and/or unreasonably dangerous in that their design lacks feasible, life-saving safety features or contains inadequate safety features. For example, it was and continues to be reasonably foreseeable and

known by defendants that users of semi-automatic handguns would not understand or appreciate that an undetectable round of ammunition may be housed in the firing chamber of a semi-automatic gun even though the ammunition magazines had been removed or emptied. Consequently, it was and continues to be reasonably foreseeable that this hazardous design would result in preventable, unintentional shootings. This hazardous design could be easily corrected through the use of a "magazine-disconnect safety" that would prevent the gun from firing with the magazine removed. Tragic, foreseeable shootings could also be prevented by use of an effective "chamber loaded indicator" that would warn a user when a bullet was in the firing chamber or a device which would "personalize" a gun preventing its firing except by an authorized purchaser. Although these devices are feasible defendant manufacturers have failed to incorporate such devices into their firearms.

G. The Direct, Substantial, and Continuing Harm to the City

92. The harm to the plaintiffs resulting from defendants' conduct includes substantially decreased public safety and health; interference with peace and tranquility and the disruption of daily life; the undermining of New York's restrictive gun laws; and direct, continuing and substantial costs.

93. New York City law contains substantial restrictions on the purchase, transfer, and possession of handguns that are undermined by defendants' conduct as set out above. These include prohibitions on the possession of firearms without a license; prohibitions on possession by certain persons, including those previously convicted of a felony, those with mental disorders, and anyone under the age of 21; prohibitions on the selling of firearms without safety locking devices and written warnings regarding safe firearm storage; a requirement that licensees not purchase handguns without prior written authorization from the City Police Department; a requirement that written requests must be made to the Police Department to purchase more than

one gun; and a requirement that the Police Department must be notified when an owner sells his gun. NYCRR §§ 5-01, 5-02, NYC Admin. Code. § 10-311; NYCRR §§ 5-25, 5-26. Defendants distribution and sales practices circumvent these laws and result in the harms those laws are intended to prevent.

94. The financial costs to the plaintiffs, incurred in whole or in part because of defendants' conduct, include the costs of responding to resulting incidents of gun violence and crime; the costs of death and injury resulting from unauthorized gun use; and the costs of criminal justice administration. These damages are wholly separate and independent of any damages suffered by individuals and are not derivative of these injuries.

**FIRST CAUSE OF ACTION:
PUBLIC NUISANCE**

95. Defendants' policies and practices have created, contributed to and maintained an unreasonable interference with rights common to the general public, which constitutes a public nuisance under New York Law.

96. Defendants have full knowledge that their policies and practices will and regularly do result in substantially increased levels of gun deaths and injuries and gun use and crime in the City, and that their conduct has a continuing, substantially detrimental effect on the City.

97. Defendants' conduct unreasonably deprives New Yorkers of the peaceful use of public streets, sidewalks and parks and interferes with commerce, travel and the quality of daily life.

98. Defendants' conduct undermines New York law restricting and regulating gun sales and possession and greatly hinders enforcement of those laws. It is contrary to New York public policy as established by New York law.

99. The harm to the City includes substantial financial costs incurred for prevention, amelioration and abatement of the nuisance.

100. At all times relevant hereto, defendants acted individually and in concert. Their liability is individual, joint and several. The harm to plaintiffs is irreparable, and they have no adequate or complete remedy at law.

**SECOND CAUSE OF ACTION:
NEGLIGENT AND INTENTIONAL ENTRUSTMENT**

101. Defendants' dealings and relationships with distributors and dealers are discretionary and voluntary. Defendants are able to set the terms and conditions of these relationships including distribution policies and practices, and to discipline or terminate relations with distributors or dealers who will not accept their terms or fail to comply. It is within the power, discretion and control of defendants to modify the policies and practices of their distributors and dealers, to seek alternative distribution channels, or to establish their own.

102. Defendants have a duty to refrain from marketing, distributing, supplying or selling their guns, a lethal product, in a manner or through particular distributors or dealers which they know or have reason to believe will facilitate and cause harm to the city and its residents.

103. Defendants have breached this duty by acting unreasonably in facilitating, maintaining and supplying the crime and underage youth market and distributing and marketing their guns in a manner that creates an unreasonable risk of harm to others.

104. The defendants negligently and intentionally entrust their handguns to persons and companies whom they know or should know will negligently or recklessly facilitate the crime market – and thereby cause death and injury and needless expenditures of City tax levy funds.

THIRD CAUSE OF ACTION:
NEGLIGENT MARKETING AND DISTRIBUTION

105. Defendants have a duty to the public and to the plaintiffs to use reasonable care in the marketing, distributing and selling of their lethal products so as to reduce the risks of their guns being used inappropriately.

106. Defendants have breached this duty by failing to exercise reasonable care in their marketing and distribution of guns and by foreseeably and knowingly facilitating, maintaining and supplying the illegitimate gun market thereby creating an unreasonable risk of harm to others.

107. The defendants' conduct is negligent, reckless, and committed with a wanton disregard of and indifference to the rights and safety of others. As a proximate result of defendants' conduct, the plaintiffs have suffered direct, particular harm and fiscal detriment.

FOURTH CAUSE OF ACTION:
NEGLIGENT DESIGN

108. Defendant manufacturers are under a duty to design and manufacture their firearms so that the firearms are reasonably safe for their intended uses and for other uses that are reasonably foreseeable.

109. Defendant manufacturers breached their duty by negligently failing to design their firearms to be reasonably safe for both their intended and reasonably foreseeable use by failing to employ alternative designs and/or safety devices.

110. Inclusion of such alternate designs and/or safety devices would reduce, if not prevent, many of plaintiffs' damages.

111. The negligent design of defendants' firearms is the legal cause of the damages suffered by plaintiffs.

**FIFTH CAUSE OF ACTION:
STRICT LIABILITY:
DEFECTIVE DESIGN**

112. Defendant manufacturers placed firearms on the market with the knowledge that they would be used without inspection for defects.

113. The firearms manufactured and/or distributed by defendant manufacturers contained defects and were defectively designed, so as to be unreasonably dangerous to those in the vicinity of their reasonably foreseeable use because the firearms did not include alternative designs and/or safety devices.

114. The defects contained in the firearms are the legal cause of the damages suffered by plaintiffs.

**SIXTH CAUSE OF ACTION:
INADEQUATE WARNING**

115. Defendant manufacturers' products are unreasonably dangerous in the hands of foreseeable users, including children. These dangers are attributable not only to design, but also to the absence of suitable warnings of the risk: (1) that minors and other irresponsible persons could gain access to guns, (2) that a round may be hidden in the chamber of a pistol, and (3) that a pistol can be fired even with the ammunition magazine removed.

116. In addition to failing to provide adequate or suitable warnings or instructions to users, including households with children, defendant manufacturers actively promoted and advertised their guns in a manner that did not alert customers and potential customers to the risks of gun possession and use.

117. Defendants' inadequate warnings are the legal cause of damages suffered by the City.

**SEVENTH CAUSE OF ACTION:
DECEPTIVE TRADE PRACTICES: GBL § 349**

118. GBL § 349 provides in part:

a. Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful ...

h. In addition to the right of action granted to the attorney general pursuant to this section, any person who has been injured by reason of any violation of this section may bring an action in his own name to enjoin such unlawful act or practice, an action to recover his actual damages or fifty dollars, which ever is greater, or both such actions.

119. Defendants, by engaging in the conduct described above, have committed deceptive acts and practices in the conduct of their business and have violated and continue to violate GBL § 349.

120. As a result of defendants' acts and practices, plaintiff have suffered and will continue to suffer substantial injuries and damages for which defendants are jointly and severally liable.

121. Unless enjoined from doing so, defendants will continue to violate this statute, for which violations plaintiffs have no adequate remedy at law.

**EIGHTH CAUSE OF ACTION:
FALSE ADVERTISING: GBL § 350**

122. GBL § 350 provides: False advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state is hereby declared unlawful.

123. GBL § 350-a provides:

The term "false advertising" means advertising, including labeling, which is misleading in a material respect and in determining whether any advertising is misleading, there shall be taken into account

(among other things) not only representations made by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertising fails to reveal facts material in the light of such representations with respect to the commodity to which the advertising relates under the conditions prescribed in said advertisement, or under such conditions as are customary or usual.

124. GBL § 350-d provides, in part:

Any person who has been injured by reason of any violation of section three hundred fifty or three hundred fifty-a of this article may bring an action in his own name to enjoin such unlawful act or practice, an action to recover his actual damages or fifty dollars, which ever is greater, or both such actions.

125. Defendants, by engaging in the conduct described above, violated and continues to violate GBL § 350.

126. As a result of defendants' false advertising, plaintiffs have suffered and will continue to suffer substantial injuries and damages for which defendants are jointly and severally liable.

127. Unless enjoined from doing so, defendants will continue to violate this statute, for which violations plaintiffs have no adequate remedy at law.

**NINTH CAUSE OF ACTION:
INDEMNITY**

128. Defendants breached duties to the plaintiff and to gun users, including but not limited to the duty not to place in the stream of commerce unreasonably dangerous firearms, the duty to make their products safe, and the duty not to negligently and deceptively market and distribute their products.

129. As a result of their breach of those duties, defendants became obligated to pay for the harm caused by their wrongful conduct, yet defendants have not done so.

130. The plaintiffs as well as the state and federal governments, have been and will be required by federal and New York State Medicaid statutes to expend large sums of money to pay the costs of treating patients with firearm related injuries; and pursuant to various state and federal laws, both HHC and the City expend substantial sums of money to treat non-Medicaid, indigent patients with fireman related injuries in New York City.

131. As a result of defendants' wrongful activities, and as a result of plaintiffs' statutory and contractual obligations, plaintiffs have paid costs resulting from defendants' breach of duty and have discharged a duty that should have been discharged by defendants. Plaintiffs are entitled to indemnity from defendants, jointly and severally, for those costs.

**TENTH CAUSE OF ACTION:
RESTITUTION**

132. Defendants breached duties, including but not limited to the duty not to place in the stream of commerce unreasonably dangerous firearms, the duty to make their products safe, and the duty not to negligently and deceptively market and distribute their products.

133. As a result of their breach of those duties, defendants became obligated to pay for the harm caused by their wrongful conduct, yet they have not done so.

134. Plaintiffs have expended large sums of money to pay for the costs of the harm caused by defendants' wrongful conduct, including the costs of treating Medicaid patients with firearm related injuries in New York City, for which the State and federal governments have also paid, and of treating non-Medicaid, indigent patients with firearm related injuries in the City. Plaintiffs' expenditures were and continue to be immediately necessary to protect the health and safety of the public.

135. Plaintiffs had and continue to have the intent to charge and recoup from defendants these sums of money.

136. As a result of defendants' wrongful activities and the necessity of plaintiffs' expenditures, plaintiffs have paid costs resulting from defendants' breach of duty. Defendants are the actual wrongdoers and had and have the duty to pay the costs resulting from their breach of duty. By avoiding their own duties to pay these costs, defendants have wrongfully forced the City of New York to perform defendants' duty and to pay the health care costs of firearm related injuries. In equity and fairness, it is defendants, not the plaintiffs who should bear firearm-related costs. Therefore defendants must jointly and severally make restitution to the plaintiffs for having paid those costs.

**ELEVENTH CAUSE OF ACTION:
UNJUST ENRICHMENT**

137. Defendants, through their wrongful conduct as described above, have reaped millions of dollars in profits from the sale of firearms in the City, profits which would have been reduced by the costs resulting from defendants' wrongful conduct had defendants not failed and refused to undertake their duty to pay those costs and not stood by while plaintiffs paid those costs.

138. In equity and good conscience, it would be unjust and unconscionable to permit defendants to enrich themselves at the expense of plaintiffs and to retain the benefit of plaintiffs' expenditures without fair compensation to plaintiffs; therefore, defendants must disgorge their unjustly acquired profits.

**TWELFTH CAUSE OF ACTION:
FEDERAL AND STATE MEDICAID EXPENDITURES**

139. To the extent that the City is entitled to damages from defendants for their legal liability under the foregoing counts for the City's share of expenditures under the State's Medicaid plan to treat firearm related injuries, the State and federal governments are also entitled to damages for their shares of such expenditures.

140. Pursuant to 42 U.S.C. § 1396a and 1396b and applicable State law, the City is entitled to seek, on behalf of the State and federal governments, reimbursement from defendants to the extent of their legal liability for the State and federal government's share of expenditures under the State's Medicaid plan to treat firearm related injuries.

141. The City hereby demands reimbursement from defendants, to the extent of their liability under the foregoing counts, for the State and federal government's share of expenditures under the State's Medicaid plan to treat firearm related injuries, with any such reimbursement to be held in trust by the City for the benefit of the State and federal governments to the extent required by law.

WHEREFORE, plaintiffs respectfully pray that the Court grant judgment as follows:


- a. issue an injunction abating the public nuisance and an injunction restraining defendants from continuing the tortious and wrongful conduct complained of herein;
- b. award compensatory damages for the City's specific costs for prevention, amelioration and abatement of the nuisance, and for costs incurred treating firearm related injuries, and for all costs related thereto;
- c. award damages on account of defendants' deceptive advertising and trade practices;
- d. award punitive damages based on defendants' intentional and reckless conduct;
- e. award reasonable counsel fees and costs; and
- f. such other and further relief as the Court may deem appropriate.

Jury Demand

Plaintiffs hereby demand a Jury Trial as to all issues of this suit.

Dated: New York, New York
June 20, 2000

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